Supreme Court, U.S.
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No. 05-

In The

Supreme Court of the United States

ALFRED L. BOCHESE,

Petitioner,

vs.

TOWN OF PONCE INLET, FLORIDA,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Before Petitioner entered into a contract to sell his property to a developer he had a right to build to seventy-feet in height in his existing zoning classification. A developer entered into a contract to purchase the property with the Petitioner so as to build to a seventy-foot condominium on it. The developer then entered into a contract with the Town to rezone the property into the same zoning classification of its adjacent development. The Town rezoned it. Thereafter the Town decided that the contract with the developer was invalid so it rescinded the contract and returned the Petitioner's property to its original zoning. *After* the second rezoning, Petitioner no longer had the right to build to seventy feet. The Eleventh Circuit ruled that because Petitioner was not a party to the contract between the Town and developer he had no standing even though his property was greatly diminished in value by the rezoning. To achieve this extraordinary result, the Eleventh Circuit declared a large exception to standing under *Village of Euclid v. Amber Realty Co.*, 272 U.S. 365 (1926) and Florida law, pitted *Euclid* against *Palazzolo v. Rhode Island*, 533 U.S. 606 (2001), eliminated Rules 10(c) 15(b), and raised issues *sua sponte* in a manner that is either in conflict with the other circuits and this Court or went so far outside the boundaries of the usual course of judicial proceedings to offend due process. The questions raised by this opinion are framed as follows:

QUESTION 1. Does an affected landowner lack standing to challenge the validity of a comprehensive zoning change to his property as an unreasonable and arbitrary exercise of legislative power because the landowner was not a third party beneficiary to a development agreement with a governmental entity that previously established the zoning classification of his property?

QUESTIONS PRESENTED – Continued

QUESTION 2. Does the "well-pleaded complaint" rule allow an appellate court in de novo review of summary judgment of a civil rights claim to ignore exhibits attached to the complaint and issues tried by express consent?

QUESTION 3. Is the due process clause of the Fourteenth Amendment of the United States Constitution violated when litigants are not provided the opportunity to present legal arguments to subject matter jurisdiction challenges raised *sua sponte* by the court of appeals wherein those excluded legal arguments would have altered the court of appeals *sua sponte* determination as to its own jurisdiction?

LIST OF PARTIES

The parties below are listed in the caption.

ALFRED L. BOCHESE,

Petitioner

TOWN OF PONCE INLET, FLORIDA,

Respondent

CORPORATE DISCLOSURE

NOT APPLICABLE

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The opinion for the Eleventh Circuit Court of Appeals is reported at *Bochese v. Town of Ponce Inlet*, 405 F.3d 964 (11th Cir. 2005). The Eleventh Circuit on April 7, 2005 affirmed in part the unpublished opinion of the district court entered on March 24, 2004.

STATEMENT OF JURISDICTION

This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

The Eleventh Circuit's opinion was rendered on April 7, 2005.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment of the United States Constitution
The First Amendment
Article III of the Constitution
42 U.S.C. § 1983
Federal Rules of Civil Procedure 10(c)
Federal Rules of Civil Procedure 15(b)
Florida Statutes 163.3194
Florida Statutes 166.041(3)(c)

STATEMENT OF THE CASE

The Petitioner Alfred Bochese asserts in this case that the Town of Ponce Inlet through improper pre-textual,

arbitrary and unreasonable legislation, down-zoned his oceanfront property and in addition, adopted and placed an arbitrary and unreasonable thirty-five foot building height restriction on the use of his property causing a diminution in its value.[1] Petitioner alleges that through this arbitrary and irrational legislative action, the Town of Ponce Inlet intentionally singled him out compared to the similarly situated property owners in the same zoning classifications in violation of the equal protection clause. The Petitioner also maintains that this unlawful action was taken in retaliation for his whistle-blowing activities related to exposing false statements made to FEMA by Town officials.

In 1990, Petitioner purchased oceanfront land in the Town of Ponce Inlet, Florida. Before purchasing the oceanfront property, the Petitioner determined that the exiting T1 zoning classification of the property permitted seventy-foot building height pursuant to Ordinance 84-11.[2]

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[1] The Petitioner also claimed the impairment/unlawful destruction of his contract with the developer and the attendant damages. He now has the property under contract for sale so that the contract issue is largely moot. The Petitioner continues to maintain that his property was far more valuable with the seventy-foot height use and that his current contemplated sale is significantly lower due to the destruction of its development value.

[2] In 1983 the Town, pursuant to Ordinance 83-012, placed a building height referendum on the ballot to amend its Town Charter restricting future buildings to thirty-five feet. The Town voters passed the building height restriction and the Charter was amended. However, in 1984, after concerns over possible litigation with ocean front property owners located in the T1 and PUD zoning classifications over the propriety of the new charter building height restrictions, the Town adopted Ordinance 84-11 which clarified the intended scope of the Ordinance referendum and grand-fathered in properties, including Petitioner's, located in the T1 and PUD zoning classifications with a

(Continued on following page)